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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

JEFFERSON-PILOT :  
INSURANCE COMPANY, :  
Plaintiff, :  
vs. : Case No. C-1-02-479  
CHRISTOPHER L. :  
KEARNEY, :  
Defendant. :

Deposition of MARTIN P. LEHENBAUER, M.D.,  
a witness herein, taken by the plaintiff as  
upon cross-examination, pursuant to the  
Federal Rules of Civil Procedure and pursuant  
to notice by counsel as to the time and place  
and stipulations hereinafter set forth, at  
the offices of Health First Physicians, 608  
Reading Road, Suite C, Mason, Ohio, at 7:38  
a.m., June 14, 2007, before Elaine Haberer, a  
Registered Professional Reporter and Notary  
Public within and for the State of Ohio.

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APPEARANCES

On behalf of Plaintiff:

WILLIAM R. ELLIS, ESQ.  
of  
Wood & Lamping  
600 Vine Street  
Suite 2500  
Cincinnati, Ohio 45202

On behalf of Defendant:

KENT WELLINGTON, ESQ.  
of  
Graydon Head & Ritchey  
1900 Fifth Third Center  
511 Walnut Street  
Cincinnati, Ohio 45202

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S T I P U L A T I O N S

It is stipulated by counsel for the  
respective parties that the deposition of  
MARTIN P. LEHENBAUER, M.D., a witness herein,  
may be taken at this time by the plaintiff as  
upon cross-examination and pursuant to the  
Federal Rules of Civil Procedure and notice  
to take deposition, all other legal  
formalities being waived by agreement; that  
the deposition may be taken in stenotype by  
the Notary Public Reporter and transcribed by  
her out of the presence of the witness; that  
the transcribed deposition was made available  
to the witness for examination and signature  
and that signature may be affixed out of the  
presence of the Notary Public-Court Reporter.

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<p style="text-align: center;">5</p> <p>1 MARTIN P. LEHENBAUER, M.D.,</p> <p>2 a witness herein, of lawful age, having</p> <p>3 been first duly sworn as hereinafter</p> <p>4 certified, was examined and testified as</p> <p>5 follows:</p> <p>6 CROSS-EXAMINATION</p> <p>7 BY MR. ELLIS:</p> <p>8 Q. Morning, Doctor, would you</p> <p>9 please identify yourself for the record?</p> <p>10 A. Martin Lehenbauer, MD. 07:37 AM</p> <p>11 Q. Doctor, what's the area of</p> <p>12 practice that you're in?</p> <p>13 A. Family practice.</p> <p>14 Q. In your practice did you have</p> <p>15 occasion to treat Christopher Kearney?</p> <p>16 A. Correct.</p> <p>17 Q. And according to the records</p> <p>18 that you provided to me, the first visit was</p> <p>19 in November of 1993?</p> <p>20 A. Yes. 07:38 AM</p> <p>21 Q. At that time when he came to see</p> <p>22 you, the chief complaint that he made was</p> <p>23 that he was experiencing anxiety for a period</p> <p>24 of roughly equal to a year, primarily</p>	<p style="text-align: center;">7</p> <p>1 that he was involved in that, I didn't make</p> <p>2 notes in terms of whether that was, you know,</p> <p>3 in terms of that particular note it looks</p> <p>4 like it was in reference to the marital</p> <p>5 situation.</p> <p>6 Q. Okay. The reason I ask you,</p> <p>7 wife is being successfully treated with</p> <p>8 Prozac, she's happy in the marriage. You</p> <p>9 have presently utilizing counseling past</p> <p>10 several years. I wasn't sure whether Chris 07:39 AM</p> <p>11 or the two of them, or what you were trying</p> <p>12 to suggest.</p> <p>13 A. Well, the note says, happy in</p> <p>14 marriage, presently utilizing counseling.</p> <p>15 Since that was all one sentence I think my</p> <p>16 intention there was that particular reference</p> <p>17 was to that.</p> <p>18 Q. All right. You indicated that</p> <p>19 he told you he had a degree in psychology and</p> <p>20 that he was a patient who was well versed in 07:40 AM</p> <p>21 the recent treatment aspects?</p> <p>22 A. Correct.</p> <p>23 Q. Are we talking about him</p> <p>24 understanding his treatment for --</p>
<p style="text-align: center;">6</p> <p>1 secondary to work, stress because his</p> <p>2 business is down 30 percent; is that correct?</p> <p>3 A. Correct.</p> <p>4 Q. You indicated in there that he</p> <p>5 owned his own business --</p> <p>6 A. Correct.</p> <p>7 Q. -- right? Did he tell you what</p> <p>8 that business was during that visit?</p> <p>9 A. I don't see that in my notes,</p> <p>10 so -- 07:38 AM</p> <p>11 Q. Okay. Under the review of</p> <p>12 systems, you have wife, some symbol, and then</p> <p>13 successful, I'm not sure what that --</p> <p>14 A. With -- wife with successful</p> <p>15 treatment.</p> <p>16 Q. Okay. Wife have successful</p> <p>17 treatment with Prozac?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And you indicated there</p> <p>20 that he was presently utilizing counseling 07:39 AM</p> <p>21 for the past several years?</p> <p>22 A. Correct.</p> <p>23 Q. Is that the wife or Chris?</p> <p>24 A. I think my intention there was</p>	<p style="text-align: center;">8</p> <p>1 A. Right.</p> <p>2 Q. -- psychological issues?</p> <p>3 A. Correct.</p> <p>4 Q. Did he tell you how long he had</p> <p>5 been treating for his psychological issues?</p> <p>6 A. I don't have that in my notes</p> <p>7 for that first visit.</p> <p>8 Q. Did he appear to be an</p> <p>9 intelligent and insightful individual to you</p> <p>10 at that time? 07:40 AM</p> <p>11 A. Go ahead and ask that question</p> <p>12 again.</p> <p>13 MR. WELLINGTON: Are we still in</p> <p>14 November '93?</p> <p>15 MR. ELLIS: Yes.</p> <p>16 Q. As of the first visit, did he</p> <p>17 strike you as an intelligent, straight</p> <p>18 thinking individual who understood his</p> <p>19 situation?</p> <p>20 A. In my physical exam I just, I</p> <p>21 had listed that he was insightful and</p> <p>22 motivated presently for improvement, so --</p> <p>23 Q. Your assessment was dysthymia</p> <p>24 and anxious mood? 07:41 AM</p>

81

1 questioning him?

2 **A. Yeah, those doctors raised that**  
 3 **possibility. And I think in my notes I was**  
 4 **stating that clear manic features, to me, and**  
 5 **but psychologists, and I may have left out a**  
 6 **word, has not been concerned either with**  
 7 **bi-polar. So, I think at that point I'm just**  
 8 **trying to balance this information that I had**  
 9 **just received with, you know, to that point**  
 10 **how I had been treating him.**

09:18AM

11 **Q.** Now, bi-polar, as I understand,  
 12 is going to extreme highs, from manic, full  
 13 of energy, full of life, full of everything,  
 14 and then down into dark depression and back  
 15 up again, right?

16 **A. That can be cyclical -- cyclical**  
 17 **features, correct.**

18 **Q.** In his case we had the  
 19 depressive or down cycles that you described,  
 20 but he never really rose to the manic level  
 21 that you --

09:19AM

22 **A. And that's what I was saying,**  
 23 **yeah, in my exam to me, not clear manic**  
 24 **features, correct.**

82

1 **Q.** So, the cycles were there, but  
 2 the heights of manic, which would be required  
 3 for a bi-polar diagnosis, were absent?

4 **A. In my mind I didn't have a**  
 5 **history of mania, correct.**

6 **Q.** Okay. From that visit forward,  
 7 is it fair to say that every visit that he  
 8 had with you, or nearly every visit that he  
 9 had with you demonstrated a focus on the  
 10 disability insurance and his disagreements  
 11 with them?

09:19AM

12 **A. And I would have to review each**  
 13 **of those office visits since I'm also foggy**  
 14 **on things that --**

15 **Q.** Let's work our way through them,  
 16 but keep that in the back of your head. The  
 17 next visit is March 15th, 2002; is that  
 18 correct?

19 **A. Correct.**

20 **Q.** Very anxious today?

09:20AM

21 **MR. WELLINGTON:** What's the  
 22 date, I'm sorry?

23 **A. March 15th, 2002.**

24 **Q.** Very anxious today but he's been

83

1 off the Serzone dose for two nights?

2 **A. Correct.**

3 **Q.** So, he had stopped taking the  
 4 medication, or had run out of it?

5 **A. At that point I don't have an**  
 6 **idea of whether he just ran out or hasn't**  
 7 **taken it.**

8 **Q.** Okay. Normally takes Xanax but  
 9 limiting it to avoid over use, so he's kind  
 10 of --

09:20AM

11 **A. All by history.**

12 **Q.** Kind of adjusting his own  
 13 medications as he sees?

14 **A. Well, the Xanax was PRN**  
 15 **previously, prescribed as needed anyways.**

16 **Q.** Now it says, now there's no  
 17 business presently secondary to the increased  
 18 stress related to the disability, right?

19 **A. Yep, that's a history from him.**

20 **Q.** That's the history from him.  
 21 Now, in the prior several notes he's been  
 22 talking about the fact that his business is  
 23 down, he's got nobody to sell these machines  
 24 to, he couldn't find a market for it, right?

09:21AM

84

1 And his only hope was to get a patent for  
 2 this machine, do you remember those notes?

3 **MR. WELLINGTON:** Objection.

4 **A. Yeah, it wasn't the very last**  
 5 **visit, but I think I recall the visit prior.**

6 **Q.** Now, he's relating the loss of  
 7 business to his increased stress levels  
 8 because of this disability insurance in the  
 9 note of March '02?

10 **A. The 15th all I said was related**  
 11 **to disability, and again, I didn't say**  
 12 **necessarily disability insurance company**  
 13 **either.**

09:21AM

14 **Q.** Well, if we look down further in  
 15 the note, he sought out help from national  
 16 experts to support his case of disability;  
 17 he's preparing for a lawsuit.

18 **A. Preparing self for lawsuit,**  
 19 **correct.**

20 **Q.** Right. On the other side is,  
 21 thought processes are clear and linear, but  
 22 very focused on the effect of life from his  
 23 disability company, right?

09:22AM

24 **A. Which side are you on on that**

<p style="text-align: center;">85</p> <p>1 note?</p> <p>2 Q. I was just reading down.</p> <p>3 A. Focused on effect of life --</p> <p>4 Q. Again, I was just reading --</p> <p>5 A. -- from his disability.</p> <p>6 Q. Basically this note was, my life</p> <p>7 is awful at this point, and it's all because</p> <p>8 of the disability company, right, March of</p> <p>9 2002?</p> <p>10 A. I mean, most of that, again,</p> <p>11 ties around to the -- I mean, notes about the</p> <p>12 anxiety, in my mind, I would have been</p> <p>13 thinking also about, you know, if he hadn't</p> <p>14 taken his medicine for a couple days. You</p> <p>15 know, this case obviously got some lines from</p> <p>16 me, so, but in terms of my physical exam,</p> <p>17 thought processes were focused on the effect,</p> <p>18 I don't know if I -- effect of life, but</p> <p>19 probably on his life from disability.</p> <p>20 Q. I'm sure, yeah, but the overall</p> <p>21 picture, March 15th, 2002, that he was</p> <p>22 presenting was that his business is down, his</p> <p>23 anxiety is up, his depression is worse, he's</p> <p>24 very stressed, all because of his disability</p>	<p style="text-align: center;">87</p> <p>1 A. And again, it comes back to --</p> <p>2 and I didn't put it in quotes, so I don't</p> <p>3 know if those are his words or my</p> <p>4 interpretation of his words. So at that</p> <p>5 point all I can say is it's my interpretation</p> <p>6 of taking his history from him.</p> <p>7 Q. But his focus in everything he</p> <p>8 told you below, because you wouldn't have</p> <p>9 known it otherwise, was what he perceived as</p> <p>10 an on -- a soon to be legal issue with the</p> <p>11 disability insurer?</p> <p>12 A. And I think I had made some</p> <p>13 notes in prior visits about the possibility</p> <p>14 of lawsuits, or he had mentioned that there</p> <p>15 was something ongoing, so --</p> <p>16 Q. Did he tell you whether or not</p> <p>17 he was being paid his benefits throughout</p> <p>18 this whole period of time?</p> <p>19 A. I don't know if I have that in</p> <p>20 my notes or not to this point in time, so --</p> <p>21 Q. Were you under the impression</p> <p>22 that the disability company was not paying</p> <p>23 benefits, that's what the fight was about?</p> <p>24 A. I think my feel, at least,</p>
<p style="text-align: center;">86</p> <p>1 insurance?</p> <p>2 A. I mean, and again, the line that</p> <p>3 I used in terms of the -- at the top of that</p> <p>4 note just related to disability. I'm not</p> <p>5 sure I was thinking his disability in regards</p> <p>6 to his depression versus, you know -- but I</p> <p>7 guess what I hear you asking is it says</p> <p>8 disability insurance company and I'm</p> <p>9 separating those two, I guess, to some</p> <p>10 extent.</p> <p>11 Q. I understand that you are and</p> <p>12 here's where my question comes in, why all of</p> <p>13 a sudden is his stress increase related to</p> <p>14 his disability? He's had this disability</p> <p>15 since 1993?</p> <p>16 A. Again, trying to think back to</p> <p>17 2002, you know, what I was stating there, and</p> <p>18 this is more coming from him, no business</p> <p>19 presently, secondary to increased stress</p> <p>20 related to disability.</p> <p>21 Q. He was telling you that the</p> <p>22 disability and the battle with the insurance</p> <p>23 company is so stressful that he can't do any</p> <p>24 business, right?</p>	<p style="text-align: center;">88</p> <p>1 looking at these notes was more that -- more</p> <p>2 of the feeling of harassment, doesn't really</p> <p>3 have to do with whether he was receiving</p> <p>4 disability or not, so --</p> <p>5 Q. Okay. But you don't know as we</p> <p>6 sit here what this harassment was other than</p> <p>7 what would be normal asking for independent</p> <p>8 medical examinations and some supporting</p> <p>9 documents, right?</p> <p>10 A. I'm not necessarily connecting</p> <p>11 those two, I mean, the independent</p> <p>12 evaluations I looked at as just being</p> <p>13 something that his insurance company had</p> <p>14 asked him to do to verify, you know, the</p> <p>15 diagnosis that I had been treating him for,</p> <p>16 and his psychologist had been treating him</p> <p>17 for. I would, in looking back at those</p> <p>18 notes, still separate out that his feeling of</p> <p>19 harassment was really a separate issue, not</p> <p>20 having to do those things, or having to be</p> <p>21 evaluated, but was something still different.</p> <p>22 Q. The very first time that he</p> <p>23 starts mentioning anything about the</p> <p>24 disability insurance company is after this</p>

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1 request for an independent medical exam, is  
2 it not? Prior to that IME, in your notes,  
3 there's no mention of it at all, is there?  
4 Other than the fact that he's making a claim  
5 for it?

6 **A. I mean, that was in terms of**  
7 **using the word harassment showed up in**  
8 **June 29th, 2001.**

9 **Q. Which was after the independent**  
10 **medical exams?**

11 **A. Right. I mean, that's the first**  
12 **time I saw those, correct.**

13 **Q. And from that date when he told**  
14 **you he had to do the independent medical**  
15 **exams forward, your notes, at least to where**  
16 **we are now in March of 2002, the notes are**  
17 **reflecting his focus as we've discussed in**  
18 **the past, now being on issues with the**  
19 **disability insurance carrier?**

20 **A. You know, the January 10th of**  
21 **2001, which would have been before, I think**  
22 **before those evaluations, again, I had that**  
23 **line in there, increased stress primarily due**  
24 **to dealing with disability company, so --**

09:27AM

09:28AM

91

1 exams?

2 **A. That I have in my notes.**

3 **Q. Very good. Next visit is**  
4 **October 2002; October 22nd?**

5 **A. I have a visit March 15th of**  
6 **2002?**

7 **Q. I'm sorry, yeah, that's the one**  
8 **I thought we were just discussing before.**  
9 **Very focussed on the effects on his life of**  
10 **his disability company. Isn't that the one**  
11 **we were just discussing?**

09:29AM

12 **A. I'm sorry.**

13 **Q. The next visit is October 22nd,**  
14 **2002?**

15 **A. Correct.**

16 **Q. In that he's complaining that**  
17 **he's still on edge concerning the battles**  
18 **with the disability company. Has attorneys**  
19 **involved in the process, getting expert**  
20 **opinions, right?**

09:30AM

21 **A. Yes.**

22 **Q. On this visit he doesn't even**  
23 **talk about his business, now the only focus**  
24 **is on the disability company, right?**

90

1 **Q. Uh-huh.**

2 **A. I mean, the timing, I mean,**  
3 **sounds like he and I had talked about it in**  
4 **January 10th, or he had at least mentioned it**  
5 **to me at that time, and again, I don't know**  
6 **that I was aware that he was going to get**  
7 **other evaluations until he showed up at that**  
8 **next visit, so --**

9 **Q. Yeah. What are the dates of the**  
10 **evaluations?**

11 **A. I think they were March, I think**  
12 **the one from the psychiatrist was March 19th,**  
13 **and there was another one that was dated**  
14 **March 4th.**

15 **Q. Uh-huh. You agree those would**  
16 **have had to have been set up in advance?**

17 **A. I can make that assumption, all**  
18 **I'm saying is that --**

19 **Q. Right.**

20 **A. -- at the January visit there**  
21 **wasn't any mention of that to me.**

22 **Q. No mention --**

23 **A. That I have in my notes.**

24 **Q. -- of any independent medical**

09:28AM

09:29AM

92

1 **A. Yeah. I mean, I made a note**  
2 **that was under the physical exam part in**  
3 **terms of what he's telling me and the history**  
4 **part of depression continues to be monitored**  
5 **by psych, which I don't really clarify in**  
6 **the -- the note under the physical exam.**

7 **Q. Uh-huh. But that's, I mean,**  
8 **obviously --**

9 **A. His expressions are primarily**  
10 **focused around these battles with the**  
11 **disability company.**

09:30AM

12 **Q. And he was intense about it,**  
13 **wasn't he?**

14 **A. I put remains on edge.**

15 **Q. We go from there to November of**  
16 **'03?**

17 **A. Yes.**

18 **Q. Again, he no longer talks about**  
19 **his business, he no longer talks about his**  
20 **family, he no longer talks about his**  
21 **girlfriend, his focus is once again on the**  
22 **disability battle, right?**

09:31AM

23 **A. Well, in that note -- we're at**  
24 **November 25th of 2003, correct?**

93

1 Q. Correct.

2 A. Just to clarify, I mean, in that  
3 note I do have he is remarried and going to  
4 infertility work up. So I would have also  
5 included that kind of as a stressor and I did  
6 note in my assessment and plan with multiple  
7 stressors.

8 Q. Looking for the --

9 A. On that note it's towards the  
10 bottom left there.

09:32AM

11 Q. Okay. I'm looking, 58 years  
12 old?

13 A. Brother with coronary artery  
14 disease, five vessel cabbage bypass.

15 Q. Also has positive --

16 A. -- family history in father and  
17 paternal aunt, I was connecting that with the  
18 coronary artery disease part.

19 Q. Okay. His weight is up  
20 11 pounds, still pending lawsuit with  
21 disability battle continues to be stressful  
22 and has --

09:32AM

23 A. And followed by psychologist.

24 Q. And followed by psychologist.

94

1 A. Still AM fatigue with some  
2 relief, and present Wellbutrin and then  
3 remarried and going to infertility work up.

4 Q. So as you're asking him what's  
5 going on in his life, the first thing he  
6 tells you is he's got this ongoing battle  
7 with the disability company, very stressful,  
8 causing him all sorts of angst, and that he's  
9 still tired in the morning. And oh, by the  
10 way, I got married and I'm going to a  
11 fertility expert. Kind of in that order,  
12 isn't it?

09:33AM

13 A. Yeah, the chief complaint was  
14 still his low energy most of the time.

15 Q. Which he relates directly to  
16 this battle?

17 A. Well, again, in terms of the  
18 order of my notes, the next thing I list  
19 after that had to do with the coronary artery  
20 disease of his brother. So, and then the  
21 weight gain, and then again, the still  
22 pending lawsuit at that point, so --

09:34AM

23 Q. Your assessment and impression,  
24 chronic depression with multiple stressors

95

1 and then specifically trial?

2 A. Well, trial change to  
3 Wellbutrin.

4 Q. Oh, I'm sorry, I misread that.  
5 Thank you. Trial change to -- so that goes  
6 to the next line?

7 A. Correct.

8 Q. Okay. What was the next time  
9 you saw Mr. Kearney?

10 A. November 25, 2003, looks like  
11 the next visit is October 5th, 2004.

09:34AM

12 Q. Did he send you or bring you in  
13 some disability forms signed by Dr. Judd?

14 A. I have some forms that were  
15 signed by Dr. Judd that I initialed  
16 July 12th, '05.

17 Q. Do you see the one from the  
18 February 11th, '04?

19 A. There was -- those are all  
20 together and I don't -- what I don't know is  
21 whether those all came in together. I have  
22 one list of February 11th of '04; I have one  
23 5/10 of '04; looks like 8/17/04.

09:35AM

24 Q. I would like to focus on the

96

1 February 11th, '04 for the moment.

2 A. February 11th of '04, okay.

3 Q. Uh-huh. Under the additional  
4 comments --

5 A. Okay.

6 Q. -- box nine, patient distressed  
7 by continued legal delays which are intended  
8 to cause further emotional distress and  
9 financial burdens. Did he ever complain to  
10 you or suggest to you that the speed with  
11 which the court dealt with the case was --  
12 let me ask it a different way. Did he ever  
13 suggest to you that the court itself was  
14 intending to cause him harm?

09:36AM

15 A. Not that I'm aware of from my  
16 notes.

17 Q. Okay. So then we would assume  
18 that in his view at least, any delay in the  
19 legal process was caused by the disability  
20 company, or you don't know?

09:37AM

21 A. I don't know since that's Dr.  
22 Judd's --

23 Q. Okay. Let's go to your visit,  
24 October 5th of '04.